



U.S. Department of Justice

United States Attorney
Southern District of New York

86 Chambers Street
New York, New York 10007

August 16, 2024

By ECF

The Honorable Andrew L. Carter, Jr.
United States District Judge
Southern District of New York
40 Foley Square
New York, New York 10007

Re: *The New York Times Company, et al. v. United States Department of Defense, et al.*, No. 22 Civ. 9448 (ALC)

Dear Judge Carter:

This Office represents Defendants the United States Departments of Defense and State (the “Government”) in the above-referenced Freedom of Information Act (“FOIA”) action. We write jointly with Plaintiffs The New York Times Company and Matthieu Aikins (“Plaintiffs”) to provide the Court a joint status report on progress made in this FOIA action since the parties’ last joint status report, dated July 3, 2024. *See* Dkt. No. 42.

As discussed in prior joint status reports, Plaintiffs initially asked the Government to prioritize FOIA Request Nos. 5, 2, and 6, and to focus specifically on certain subparts within those Requests. In late May 2023, Plaintiffs asked the Government to “combine” FOIA Request Nos. 2 and 8, as well as to begin processing the FOIA Requests directed to State, FOIA Request Nos. 1 and 7. The Government provides the following status updates with respect to Plaintiffs’ current priorities.

FOIA Request No. 5

With respect to FOIA Request No. 5, Plaintiffs have requested that the Government prioritize subpart (1), which seeks a Law Enforcement Report (“LER”) from the U.S. Army Criminal Investigation Division (“USACID”). This LER consists of a 71-page narrative memorandum and 517 exhibits totaling 1,581 pages. USACID produced the redacted narrative memorandum to Plaintiffs on March 10, 2023. It made the last of eight monthly releases of exhibit records on December 11, 2023. On October 9, 2023, Plaintiffs requested that USACID reconsider the extent of some of the redactions and withholdings in the productions that had been made to that date. USACID is continuing to reconsider redactions and withholdings made pursuant to FOIA Exemption 1; it determined that other redacted or withheld records addressed in Plaintiffs’ request should not be reprocessed. Plaintiffs subsequently asked USACID to reconsider this determination with respect to Exhibits 177 and 187; on July 2, 2024, USACID reprocessed and rereleased Exhibit 187, and the parties have resolved issues with respect to Exhibit 177 for the time being. If the agency determines that any other records should be reprocessed and reproduced,

Plaintiffs have requested that the agency produce records on a rolling basis, as they are available for production. USACID is considering this request.

Of the 517 exhibits to the LER, USACID referred 13 (Exhibits 2–4, 136–140, 165–167, and 172–173) to U.S. Army Central on May 9, 2023. U.S. Army Central processed these exhibits and produced non-exempt records on February 27, 2024.

FOIA Request Nos. 2 and 8

With respect to FOIA Request No. 2, Plaintiffs have requested all records pertaining to a detainee held at Bagram Theater Internment Facility from approximately November 2012 to November 2013. Mr. Aikins sent this Request to U.S. Central Command (“CENTCOM”), and CENTCOM referred it to the U.S. Army Office of the Provost Marshal General (“OPMG”). OPMG identified 198 pages as potentially responsive to this Request and referred those pages back to CENTCOM, as the original classifying authority, for declassification review.

CENTCOM conducted this review, and, during the week of March 27, 2023, it sent the 198 potentially responsive pages to the U.S. Special Operations Command (“SOCOM”) for consultation. SOCOM finalized its review and returned these pages to CENTCOM on February 15, 2024. CENTCOM returned these pages to OPMG for processing and production, and OPMG produced non-exempt responsive records on May 17, 2024.

With respect to FOIA Request No. 8, OPMG identified 259 pages as potentially responsive to this Request and referred those pages to CENTCOM, as the original classifying authority, for declassification review. CENTCOM completed this review and returned these pages to OPMG for processing and production. OPMG made a production of non-exempt responsive records on January 30, 2024. It also referred six pages to SOCOM and made a final production of those pages on March 12, 2024. On June 20, 2024, Plaintiffs requested that OPMG reprocess and reproduce two pages responsive to FOIA Request No. 8; OPMG reproduced these pages on August 16, 2024.

FOIA Request No. 6

With respect to FOIA Request No. 6, Plaintiffs have requested that the Government prioritize subparts (9) through (12), which seek records related to specific Afghan nationals, medical facilities in Wardak Province, and reports and investigations regarding alleged violations of the laws of war and deaths of U.S. Army service members. CENTCOM has completed its responsiveness review and has begun processing responsive documents. It is prioritizing processing those documents that are responsive to subparts (9) through (12) of this Request first. CENTCOM made its first production of non-exempt records responsive to this Request on December 21, 2023, and made its second, third, and fourth productions, which consisted of letters informing Plaintiffs that pages were sent for consultation with other agencies or DoD components, on March 11, 2024, May 22, 2024, and July 23, 2024, respectively. It anticipates making its next production by September 20, 2024.

FOIA Request Nos. 1 and 7

Plaintiffs' Complaint references two FOIA Requests directed to State, FOIA Request Nos. 1 and 7. On January 23, 2023, Plaintiffs agreed to streamline the two Requests into one request (the "Streamlined Request") seeking records related to allegations of war crimes and other illegal or improper conduct by members of U.S. special operations forces and associated Afghan translators and support personnel in Wardak Province, as well as records related to President Hamid Karzai's efforts to remove U.S. forces from Wardak Province.

State is continuing to process the Streamlined Request. To date, State has made ten productions of non-exempt records responsive to the Streamlined Request. State intends to make its eleventh production of such records by September 4, 2024.

The parties thank the Court for its consideration of this joint status report and propose filing their next joint status report by September 16, 2024.

Respectfully,

DAMIAN WILLIAMS
United States Attorney for the
Southern District of New York

By: /s/ Alyssa B. O'Gallagher
ALYSSA B. O'GALLAGHER
LUCAS ISSACHAROFF
Assistant United States Attorneys
Tel.: (212) 637-2822/2737
Email: Alyssa.O'Gallagher@usdoj.gov
Lucas.Issacharoff@usdoj.gov